

#### § 431.240

the State agency hearing may consist of a review by the agency hearing officer of the record of the local evidentiary hearing to determine whether the decision of the local hearing officer was supported by substantial evidence in the record.

(b) A person who participates in the local decision being appealed may not participate in the State agency hearing decision.

#### § 431.240 Conducting the hearing.

(a) All hearings must be conducted—

(1) At a reasonable time, date, and place;

(2) Only after adequate written notice of the hearing; and

(3) By one or more impartial officials or other individuals who have not been directly involved in the initial determination of the action in question.

(b) If the hearing involves medical issues such as those concerning a diagnosis, an examining physician's report, or a medical review team's decision, and if the hearing officer considers it necessary to have a medical assessment other than that of the individual involved in making the original decision, such a medical assessment must be obtained at agency expense and made part of the record.

#### § 431.241 Matters to be considered at the hearing.

The hearing must cover—

(a) Agency action or failure to act with reasonable promptness on a claim for services, including both initial and subsequent decisions regarding eligibility;

(b) Agency decisions regarding changes in the type or amount of services;

(c) A decision by a skilled nursing facility or nursing facility to transfer or discharge a resident; and

(d) A State determination with regard to the preadmission screening and annual resident review requirements of section 1919(e)(7) of the Act.

[57 FR 56505, Nov. 30, 1992]

#### § 431.242 Procedural rights of the applicant or recipient.

The applicant or recipient, or his representative, must be given an opportunity to—

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(a) Examine at a reasonable time before the date of the hearing and during the hearing:

(1) The content of the applicant's or recipient's case file; and

(2) All documents and records to be used by the State or local agency or the skilled nursing facility or nursing facility at the hearing;

(b) Bring witnesses;

(c) Establish all pertinent facts and circumstances;

(d) Present an argument without undue interference; and

(e) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.

[44 FR 17932, Mar. 29, 1979, as amended at 57 FR 56506, Nov. 30, 1992]

#### § 431.243 Parties in cases involving an eligibility determination.

If the hearing involves an issue of eligibility and the Medicaid agency is not responsible for eligibility determinations, the agency that is responsible for determining eligibility must participate in the hearing.

#### § 431.244 Hearing decisions.

(a) Hearing recommendations or decisions must be based exclusively on evidence introduced at the hearing.

(b) The record must consist only of—

(1) The transcript or recording of testimony and exhibits, or an official report containing the substance of what happened at the hearing;

(2) All papers and requests filed in the proceeding; and

(3) The recommendation or decision of the hearing officer.

(c) The applicant or recipient must have access to the record at a convenient place and time.

(d) In any evidentiary hearing, the decision must be a written one that—

(1) Summarizes the facts; and

(2) Identifies the regulations supporting the decision.

(e) In a *de novo* hearing, the decision must—

(1) Specify the reasons for the decision; and

(2) Identify the supporting evidence and regulations.

(f) The agency must take final administrative action within 90 days

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from the date of the request for a hearing.

(g) The public must have access to all agency hearing decisions, subject to the requirements of subpart F of this part for safeguarding of information.

### § 431.245 Notifying the applicant or recipient of a State agency decision.

The agency must notify the applicant or recipient in writing of—

- (a) The decision; and
- (b) His right to request a State agency hearing or seek judicial review, to the extent that either is available to him.

### § 431.246 Corrective action.

The agency must promptly make corrective payments, retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility if—

- (a) The hearing decision is favorable to the applicant or recipient; or
- (b) The agency decides in the applicant's or recipient's favor before the hearing.

[57 FR 56506, Nov. 30, 1992]

## FEDERAL FINANCIAL PARTICIPATION

### § 431.250 Federal financial participation.

FFP is available in expenditures for—

- (a) Payments for services continued pending a hearing decision;
- (b) Payments made—
  - (1) To carry out hearing decisions; and
  - (2) For services provided within the scope of the Federal Medicaid program and made under a court order.
- (c) Payments made to take corrective action prior to a hearing;
- (d) Payments made to extend the benefit of a hearing decision or court order to individuals in the same situation as those directly affected by the decision or order;
- (e) Retroactive payments under paragraphs (b), (c), and (d) of this section in accordance with applicable Federal policies on corrective payments; and
- (f) Administrative costs incurred by the agency for—

(1) Transportation for the applicant or recipient, his representative, and witnesses to and from the hearing;

(2) Meeting other expenses of the applicant or recipient in connection with the hearing;

(3) Carrying out the hearing procedures, including expenses of obtaining the additional medical assessment specified in § 431.240 of this subpart; and

(4) Hearing procedures for Medicaid and non-Medicaid individuals appealing transfers, discharges and determinations of preadmission screening and annual resident reviews under part 483, subparts C and E of this chapter.

[44 FR 17932, Mar. 29, 1979, as amended at 45 FR 24882, Apr. 11, 1980; 57 FR 56506, Nov. 30, 1992]

## Subpart F—Safeguarding Information on Applicants and Recipients

SOURCE: 44 FR 17934, Mar. 29, 1979, unless otherwise noted.

### § 431.300 Basis and purpose.

(a) Section 1902(a)(7) of the Act requires that a State plan must provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan. This subpart specifies State plan requirements, the types of information to be safeguarded, the conditions for release of safeguarded information, and restrictions on the distribution of other information.

(b) Section 1137 of the Act, which requires agencies to exchange information in order to verify the income and eligibility of applicants and recipients (see § 435.940ff), requires State agencies to have adequate safeguards to assure that—

(1) Information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving the information, and information received under section 6103(l) of the Internal Revenue Code of 1954 is exchanged only with agencies authorized to receive that information under that section of the Code; and